

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File Number: EB-07-OR-140
Michael H. Glass	)	
	)	NAL/Acct. No. 200832620004
Licensee of WMER-AM	)	
Meridian, Mississippi	)	FRN: 0003779345
Facility ID # 48542	)	
	)	

**FORFEITURE ORDER**

**Adopted:** May 29, 2008

**Released:** June 2, 2008

By the Regional Director, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of one thousand five hundred dollars (\$1,500) to Michael H. Glass, licensee of station WMER-AM, in Meridian, Mississippi, for willful and repeated violation of Sections 11.35 and 73.1745(a) of the Commission’s Rules (“*Rules*”) and Section 301 of the Communications Act of 1934, as amended (“*Act*”).<sup>1</sup> The noted violations involve Mr. Glass’ failure to maintain an operational Emergency Alert System (“*EAS*”), failure to operate within authorized power limitations and failure to have a license for the station’s Studio to Transmitter Link (“*STL*”).

**II. BACKGROUND**

2. On December 7, 2007, the Commission’s New Orleans Office of the Enforcement Bureau (“*New Orleans Office*”) received a complaint concerning station WMER-AM. The complainant alleged station WMER-AM did not have an operational EAS, was running over power at night, and was operating an STL without a license. Station WMER-AM’s license requires it to reduce its power at night to 0.101 kW of power. Sunset local time for the month of January is 5:15 P.M.

3. On January 14, 2008, agents from the New Orleans Office monitored the field strength for station WMER-AM operating on 1390 kHz and observed a reduction in field strength at night. However, the observed reduction was not as much as required by the station’s authorization. WMER-AM reduced power by approximately 58%, and they are required to reduce by 98%.

4. On January 15, 2008, the agents took field strength measurements of the STL for WMER-AM operating on 948 MHz and determined that the radiated signals exceeded the limits for operation under Part 15 of the Rules and therefore required a license.<sup>2</sup> Agents also monitored the field strength for station

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<sup>1</sup> 47 C.F.R. §§ 11.35, 73.1745(a); 47 U.S.C. § 301.

<sup>2</sup> Section 15.209 of the Rules provides that non-licensed broadcasting in the 216-960 MHz band is permitted only if the field strength of the transmission does not exceed 200 µV/m at three meters. 47 C.F.R. § 15.209. On January 15, 2008, the measurements indicated that the signals were 4,044 times greater, than the maximum permissible level for a non-licensed Part 15 transmitter.

WMER-AM on 1390 kHz, and again observed a reduction at night. However, the observed reduction was not as much as required by the station's authorization. WMER-AM again reduced power by approximately 58 percent.

5. On January 16, 2008, agents from the New Orleans Office, accompanied by the licensee, inspected station WMER-AM at the main studio in Meridian, Mississippi. During the inspection, Mr. Glass stated that the station had not conducted any EAS tests for at least one month. He tried to run an EAS test during the inspection but found the EAS equipment non-operational. He was unable to produce any evidence, EAS logs, or printouts to demonstrate that the EAS had been operational at any point during the past year. He also stated the printer for the EAS had been broken for a year. Inspection of the transmitter site revealed station WMER-AM was operating at 2.1 kW at night, instead of the required 0.101 kW. Mr. Glass confirmed that the station had been using the same STL since the station began operations, but was not able to provide a current license for the STL. The only license found expired June 1, 2004. A search of the FCC licensee database did not reveal a current license for the STL.

6. On March 6, 2008, the New Orleans Office issued a *Notice of Apparent Liability for Forfeiture* to Mr. Glass in the amount of sixteen thousand dollars (\$16,000) for the apparent willful and repeated violation of Sections 11.35 and 73.1745(a) of the Rules and Section 301 of the Act.<sup>3</sup> Mr. Glass submitted a response to the *NAL* requesting a reduction or cancellation of the proposed forfeiture.

### III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining Mr. Glass' response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>6</sup>

8. Section 11.35 of the Rules<sup>7</sup> requires all broadcast stations to ensure that EAS encoders, EAS decoders and Attention Signal generating and receiving equipment is installed and operational so that the monitoring and transmitting functions are available during the times the station is in operation. Broadcast stations must also determine the cause of any failure to receive required monthly and weekly EAS tests, and must indicate in the station's log why any required tests were not received and when defective equipment is removed and restored to service. During the inspection, station WMER-AM tried but failed to run an EAS test and could not demonstrate that its EAS was operational. There was also no evidence that the EAS equipment had been operational at any time during the past year.

9. Section 73.1745(a) of the Rules<sup>8</sup> states that no broadcast station shall operate at times, or with modes or power, other than those specified and made a part of the license, unless otherwise provided

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<sup>3</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832620004 (Enf. Bur., New Orleans Office, March 6, 2008) ("*NAL*").

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>7</sup> 47 C.F.R. § 11.35.

<sup>8</sup> 47 C.F.R. § 73.1745(a).

in this part. Station WMER-AM is authorized to operate at 0.101 kW of power at night. On January 14 and 15, 2008, agents observed that station WMER-AM did not reduce its power to the required levels after sunset local time. The agents later confirmed that the transmitter was set to operate at 2.1kW at night.

10. Section 301 of the Act requires that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license. In particular, Section 301 of the Act states that “[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any State, Territory, or possession of the United States or in the District of Columbia to another place in the same State, Territory, possession, or District; . . . except under and in accordance with this chapter and with a license in that behalf granted under the provisions of this chapter.”<sup>9</sup> Section 74.6 of the Rules<sup>10</sup> states applicants for and licensees of low power auxiliary stations authorized under subparts D, E, F, and H of this part are subject to the application and procedural rules for wireless telecommunications services contained in part 1, subpart F of this chapter. Section 1.903 located in part 1, subpart F, requires stations in the Wireless Radio Services to be used and operated with a valid authorization granted by the Commission. On January 15, 2008, agents from the New Orleans Office determined that station WMER-AM was using an STL on 948 MHz without a license. The owner for station WMER-AM admitted that the station had been using the same STL since it began operations.<sup>11</sup> The owner was only able to produce a license for the STL that expired in 2004.

11. Thus, based on the evidence before us, we find that Mr. Glass willfully<sup>12</sup> and repeatedly<sup>13</sup> violated Sections 11.35 and 73.1745(a) of the Rules and Section 301 of the Act by failing to have an operational EAS, failing to operate within authorized power limitations, and failing to have a license for the station’s STL.

12. Mr. Glass requests a reduction of the forfeiture based on his history of compliance with the Rules. Mr. Glass also asserts that the proposed forfeiture would pose a financial hardship. The Commission has determined that, in general, an entity’s gross revenues are the best indicator of its ability to pay a forfeiture.<sup>14</sup> After examining the financial documentation submitted by Mr. Glass and his station’s history, we agree and reduce the forfeiture to \$1,500 based on his demonstrated inability to pay and his history of compliance with the Rules.

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<sup>9</sup> 47 U.S.C. § 301.

<sup>10</sup> 47 C.F.R. § 74.6.

<sup>11</sup> Based on this admission, station WMER-AM used its STL more than 720 hours annually. See 47 C.F.R. § 74.24(d).

<sup>12</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful,’ . . . means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act . . . .” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>13</sup> As provided by 47 U.S.C. § 312(f)(2), a continuous violation is “repeated” if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97<sup>th</sup> Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

<sup>14</sup> See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator’s gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator’s gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator’s gross revenues).

13. We have examined Mr. Glass' response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Mr. Glass willfully and repeatedly violated Sections 11.35 and 73.1745(a) of the Rules and Section 301 of the Act. However, we reduce the forfeiture for these violations to \$1,500, based on Mr. Glass' history of compliance with the Rules and demonstrated inability to pay.

#### IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Michael H. Glass **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one thousand five hundred dollars (\$1,500) for violation of Sections 11.35 and 73.1745 of the Rules and Section 301 of the Act.<sup>15</sup>

15. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>16</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment[s] by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures. Mr. Glass will also send electronic notification on the date said payment is made to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov).

16. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Michael H. Glass at his address of record and to his counsel, John S. Neely, Miller and Neely, P.C., 6900 Wisconsin Avenue, Suite 704, Bethesda, MD 20815.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton  
Regional Director, South Central Region  
Enforcement Bureau

<sup>15</sup> 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 11.35, 73.1745.

<sup>16</sup> 47 U.S.C. § 504(a).